

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1915.

No. 2857. 266

**CHARLES I. BURLINGAME, H. OSCAR HUOT, AND GEORGE
S. ENGLE, APPELLANTS,**

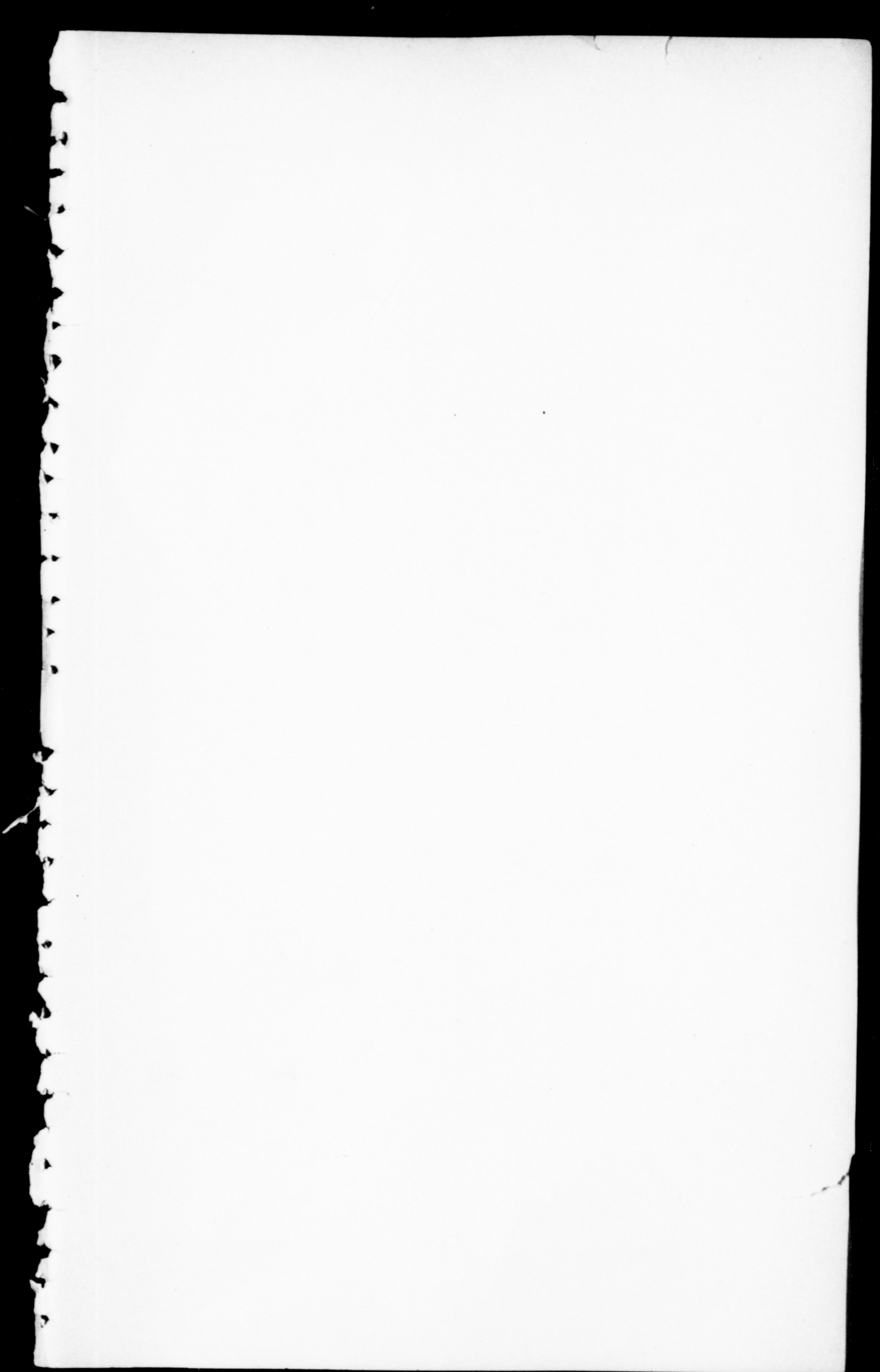
vs.

ARTHUR MANCHESTER AND HARRY SPOONER.

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED JULY 25, 1915.

PRINTED JULY 28, 1915.



Court of Appeals of the District of Columbia.

OCTOBER TERM, 1915.

No. 2857.

CHARLES I. BURLINGAME, H. OSCAR HUOT, AND GEORGE
S. ENGLE, APPELLANTS,

vs.

ARTHUR MANCHESTER AND HARRY SPOONER,
APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 2857.

CHARLES I. BURLINGAME et al., Appellants,
vs.
ARTHUR MANCHESTER et al.

a Supreme Court of the District of Columbia.

No. 31486. In Equity.

CHARLES I. BURLINGAME, H. OSCAR HUOT, and GEORGE S. ENGLE,
Plaintiffs,

vs.
ARTHUR MANCHESTER and HARRY SPOONER, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Mandate of the Court of Appeals.*

Filed March 31, 1915.

In the Supreme Court of the District of Columbia.

No. 31486. Equity.

CHARLES I. BURLINGAME et al.
vs.
ARTHUR MANCHESTER et al.

UNITED STATES OF AMERICA, *ss:*

[SEAL.]

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between Charles I. Bur-

lingame, H. Oscar Huot, and George S. Engle, plaintiffs, and Arthur Manchester and Harry M. Spooner, defendants, Equity No. 31486, wherein the decree of the said Supreme Court entered in said cause on the 7th day of November, A. D. 1913, is in the following words, viz:

This cause coming on to be heard at this time, and having been duly considered, it is thereupon by the Court this 7th day of November, A. D. 1913, adjudged, ordered and decreed that the injunction pendente lite heretofore issued in this cause be, and the same hereby is, dissolved; that the complainants' bill in this cause filed be, and the same hereby is, dismissed, and that the defendants recover of the complainants their costs in this behalf sustained, as the same shall be taxed by the Clerk, and have execution therefor as at law.

2 And it is further ordered that the defendants have leave, if so advised, to proceed at law by separate suit or suits against the complainants and the surety on their undertaking filed in the above entitled cause, for the recovery of such damages, if any, as the defendants have suffered or sustained by reason of wrongfully and inequitably suing out the injunction in the above entitled cause, or, at their election, to apply to the court by such supplemental proceedings as they may be advised to ascertain such damages, and to direct the manner in which the same shall be ascertained.

And the plaintiffs having noted an appeal in open court from this decree, it is hereby further ordered that during the pendency of the said appeal and until the final determination of the questions presented thereby, the defendants be and they and each of them, their and each of their agents, assigns and attorneys, hereby are restrained and enjoined from divulging otherwise than in the prosecution of their claims for letters patent any secrets obtained from the plaintiffs herein, and the said defendants, their agents, assigns and attorneys, are further restrained and enjoined from doing any act to embarrass or hinder the said plaintiffs otherwise than as aforesaid: Provided that the plaintiffs shall file in this cause an undertaking with surety to be approved by the court to answer all damages and costs which the defendants shall suffer or sustain by reason of the failure of the plaintiffs to make good their plea upon said appeal; and that the plaintiffs shall further file in this cause a bond for costs on appeal to the Court of Appeals, which is hereby fixed at One Hundred (\$100) Dollars.

WENDELL P. STAFFORD, *Justice.*

3 as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of January, in the year of our Lord one thousand nine hundred and fifteen, the said cause came

on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs; and that the said defendants, Arthur Manchester and Harry M. Spooner, recover against the said plaintiffs, for their costs herein expended and have execution therefor.

MARCH 1, 1915.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Seth Shepard, Chief Justice of said Court of Appeals, the 27th day of March, in the year of our Lord one thousand nine hundred and fifteen.

Costs of defendants:

Clerk	\$—	} Paid.
Attorney	\$—	
Printing Record.....	\$—	

HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

4

Costs of Defendants' Witnesses.

Filed April 1, 1915.

* * * * *

I, William C. Sullivan, attorney of record in the above entitled cause, do hereby certify that the following named persons attended court as witnesses on behalf of the defendants, the number of days set opposite their respective names, and in so doing travelled the number of miles likewise set opposite their respective names, and are accordingly entitled to per diem and mileage allowances as follows:

M. F. Goodrich, one day.....	\$1.25
J. J. Morrissey, one day.....	1.25
Mrs. E. G. Gatus, one day.....	1.25
Miss Cora Houle, one day.....	1.25
William E. Braman, one day.....	1.25
Charles E. Spooner, one day.....	1.25
Harry R. Spooner, one day.....	1.25
Lodema Kells, one day.....	1.25
Joachin Fortin, two days.....	2.50
E. B. Rosenkranz, two days	2.50
John W. Bond, one day.....	1.25

Albert C. Manchester, one day.....	1.25
Eva Manchester, three days.....	3.75
Carrie D. Spooner, two days.....	2.50
M. F. Goodrich, 200 miles.....	10.00
Mrs. E. G. Gatus, 116 miles.....	5.80
Joachin Fortin, 1,840 miles.....	92.00
Eva Manchester, 820 miles.....	41.00
Carrie D. Spooner, 820 miles.....	41.00
Arthur P. Manchester, 820 miles.....	41.00
Harry M. Spooner, 820 miles.....	41.00
Total, 19 days, 6,256 miles.....	\$295.55

W. C. SULLIVAN,
Attorney for Defendants.

Motion to Stay Execution or Retax Costs.

Filed April 12, 1915.

* * * * *

Come now the complainants in the above entitled cause by their attorneys, and move the Court to stay execution for costs awarded against them therein, or to direct the Clerk to retax the said costs, upon the following grounds:

5 1. In and by the opinion and decision of the Court of Appeals of the District of Columbia in the said cause, it has been held and determined that this Court was without jurisdiction of the same. Wherefore, it was without power to adjudge and award costs against the complainants, and the said final decree is in respect thereto a nullity.

2. The said costs as taxed by the Clerk include an allowance for mileage for 6,256 miles, of which no sufficient evidence exists or has been presented to the Clerk herein; and mileage for 1,640 miles thereof is allowed to the defendants, who under no circumstances can be entitled thereto; and as respects the witnesses other than the defendants for whom said mileage is allowed, it is not shown and does not appear that their attendance in the District of Columbia as witnesses was necessary, and that their testimony was necessary and essential, or that if necessary and essential, the same could not conveniently and with due regard to the right of the defendants have been taken by deposition at the respective places of residence of the said witnesses, or that the said witnesses or any of them, including the defendants, were summoned from without the District of Columbia according to the form of the statute in said case made and provided.

HENRY E. DAVIS,
A. L. NEWMYER,
Attorneys for Complainants.

To Messrs. W. C. Sullivan & Church & Church, Attorneys for Defendants:

Please take notice that on Friday, April 16th, 1915, at the opening of the Court or as soon thereafter as counsel can be heard, the foregoing motion will be presented for consideration and action by the Court.

Respectfully,

HENRY E. DAVIS,
A. L. NEWMYER,
Attorneys for Complainants.

6 April 12, 1915.
Service acknowledged.

W. C. SULLIVAN,
Att'y for Def'ts.

Order Overruling Motion.

Filed June 7, 1915.

* * * * *

Upon consideration of the alternative motion of the plaintiffs to stay execution or to retax costs, and the defendants consenting to a retaxation of costs to the extent of disallowing the mileage taxed in favor of the defendants, Arthur P. Manchester, and Harry M. Spooner, personally, it is thereupon by the court this 7th day of June, A. D. 1915, adjudged, ordered and decreed that the costs in this case be, and the same hereby are, retaxed to the extent of disallowing the mileage taxed by the Clerk in favor of said defendants personally, and that in all other respects and particulars the said motion of the plaintiffs be, and the same hereby is, denied.

F. L. SIDDONS, *Justice.*

Order for Citation and Appeal.

Filed June 16, 1915.

* * * * *

The Clerk of said Court will please enter an appeal by the plaintiffs to the Court of Appeals of the District of Columbia from the order of June 7, 1915, overruling the motion to stay execution, &c., and issue Citation accordingly to defendants.

HENRY E. DAVIS,
A. L. NEWMYER,
Attorneys for Plaintiffs.

7 In the Supreme Court of the District of Columbia.

No. 31486. In Equity.

CHARLES I. BURLINGAME et al.

VS.

ARTHUR MANCHESTER et al.

The President of the United States to Arthur Manchester and Harry Spooner, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal noted in the Supreme Court of the District of Columbia, on the 16th day of June, 1915, wherein Charles I. Burlingame, H. Oscar Huot & George S. Engle are Appellants, and you are Appellees, to show cause, if any there be, why the Decree rendered against the said Appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. Harry Covington, Chief Justice of the Supreme Court of the District of Columbia, this 16th day of June in the year of our Lord one thousand nine hundred and fifteen.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clk.*,

By F. E. CUNNINGHAM,

Ass't Clerk.

Service of the above Citation accepted this 17th day of June, 1915.

W. C. SULLIVAN,

Attorney for Appellee.

[Endorsed:] No. 31486. Equity. Burlingame vs. Manchester. Citation. Issued June 16, 1915. Served cop- of the within Citation on ————. ————, Marshal. ————, Attorney for Appellant.

8

Memorandum.

June 22, 1915.—Bond on appeal \$750, approved and filed.

Assignments of Error.

Filed July 12, 1915.

* * * * *

The Court erred as follows:

1. In overruling the motion of plaintiff, Engle, appellant, to stay execution and retax costs.
2. In holding that the certificate of mileage for witnesses for the

defendants was sufficient evidence thereof to justify action of the court thereon.

3. In not holding that, in as much as the Court of Appeals of the District of Columbia affirmed the decree on a former appeal herein, upon the ground of want of jurisdiction of the court below, the defendants were not entitled to costs.

4. In holding that the defendants are entitled herein to costs for either attendance of their witnesses or mileage for the same, in view of the fact that, as aforesaid, the said Court of Appeals found the court below without jurisdiction to entertain the cause, and for that expressed reason affirmed the decree of the latter court in dismissing the bill of complaint herein.

HENRY E. DAVIS,
A. L. NEWMYER,
Attorneys for George S. Engle, Defendant-Appellant.

9

Designation of Record.

Filed July 12, 1915.

* * * * *

To the Clerk of the Court.

SIR: We hereby designate for the record on the appeal of the plaintiff, George S. Engle, from the order of June 7, 1915, in the above entitled cause, the following:

1. Mandate of the Court of Appeals on the prior appeal of the plaintiffs.
2. Certificate of attendance of witnesses for defendant and mileage filed April 1, 1915.
3. Motion of plaintiffs of April 12, 1915, to stay execution and retax costs.
4. Order of June 7, 1915, overruling the said motion.
5. Appeal by plaintiff, Engle, from the said order and order for citation thereon.
6. Citation and return of same with service accepted.
7. Note of filing and approving bond on appeal.
8. Assignments of Error.
9. This designation.

HENRY E. DAVIS,
A. L. NEWMYER,
Attorneys for George S. Engle, Defendant-Appellant.

W. C. Sullivan, Esquire, and Messrs. Church & Church, Attorneys for Plaintiffs.

SIRS: Please take notice that we have this 12th day of July, 1915, filed the foregoing designation for the record on the appeal of the plaintiff, Engle, in the above entitled cause from the order of June 7, 1915, therein.

HENRY E. DAVIS,
A. L. NEWMYER,
Attorneys for George S. Engle, Defendant-Appellant.

10 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 9, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 31486 in Equity, wherein Charles I. Burlingame et al. are Plaintiffs and Arthur Manchester et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 21st day of July, 1915.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2857. Charles I. Burlingame et al., appellants, vs. Arthur Manchester et al. Court of Appeals, District of Columbia. Filed July 24, 1915. Henry W. Hodges, clerk.

